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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF)	Case No.
CALIFORNIA, BY AND THROUGH THE)	
CALIFORNIA CORPORATIONS)	PETITION FOR LIMITED RECEIVER
COMMISSIONER,)	
)	
Petitioner,)	
)	
vs.)	
)	
WESTERN ESCROW SERVICES, a California)	
Corporation,)	
)	
Respondent.)	

Petitioner, the People of the State of California, by and through the California Corporations Commissioner (“Commissioner” or “Petitioner”), administers the provisions of the California Escrow Law (Financial Code § 17000 et seq.), and the regulations issued pursuant thereto (Title 10, California Code of Regulations, Chapter 3, Subchapter 9, Sections 1700 et seq.), which regulate the business and activities of independent escrow agents.

The Commissioner having issued an Order Taking Possession of the Trust Funds and Escrow records of Western Escrow Services pursuant to Financial Code section 17621, respectfully states:

1 1. On June 3, 2004, the Commissioner issued an escrow agent's license pursuant to the
2 California Escrow Law to Western Escrow Services ("Western Escrow"), a California corporation.
3 Pursuant to that license, the Commissioner authorized Western Escrow to engage in business as an
4 escrow agent within the State of California. The license is currently valid and unrevoked. Western
5 Escrow's principal place of business was 2425 Camino Del Rio South, Suite 150, San Diego,
6 California 92108.

7 2. Nicholas Antoniadès ("Antoniades") is, and was at all times relevant herein, the
8 president and sole shareholder of Western Escrow.

9 3. On or about March 1, 2007, the Commissioner, by and through his staff, commenced
10 a special examination of the books and records of Western Escrow. The special examination was
11 commenced after the Department of Corporations ("Department") received information from Escrow
12 Agent's Fidelity Corporation ("EAFC") that it had received a telephone call from Antoniadès
13 regarding a trust account shortage. The special examination revealed that the escrow manager of
14 Western Escrow, Gloria Luna ("Luna") had made at least one-hundred and seventy (170)
15 unauthorized disbursements of trust funds from the Western Escrow trust account to herself and/or
16 her daughter, Valerie Dominguez ("Dominguez"), also an employee of Western Escrow, totaling
17 \$313,048.94 between March 21, 2005 and January 22, 2007 in violation of Financial Code section
18 17414(a)(1) and California Code of Regulations, title 10, sections 1738 and 1738.2. The special
19 examination further revealed that Luna was altering Settlement Statements in violation of Financial
20 Code section 17414(a)(1) to hide the unauthorized disbursements. The unauthorized disbursements
21 resulted in a trust account shortage and numerous ongoing debit balances in violation of California
22 Code of Regulations, title 10, section 1738.1. Western Escrow has been unable to cure the trust
23 account shortage to date.

24 4. The special examination further revealed that Western Escrow had not reported the
25 employment of Luna or Dominguez to the Department as required in violation of Financial Code
26 sections 17212.1, 17414.1 and 17419, and further failed to monitor the activities of Luna and
27 Dominguez thereby allowing Luna and Dominguez to embezzle trust funds as described in
28 paragraph 3 above.

1 5. On or about June 25, 2007, Antoniades, on behalf of Western Escrow, filed a proof of
2 loss claim with EAFC, the fidelity indemnifier for the independent escrow agent industry, in the
3 amount of \$296,520.00. On or about August 13, 2007, EAFC issued and served its claim decision
4 on Western Escrow stating that it would indemnify Western Escrow in the amount of \$257,202.00 so
5 long as someone other than Antoniades, on behalf of Western Escrow, received the indemnity funds
6 and handled the distribution of Western Escrow trust funds to trust beneficiaries and/or customers.
7 Antoniades did not appeal the EAFC claim decision.

8 6. Western Escrow has ceased all escrow operations.

9 7. On November 5, 2007, the Commissioner, by way of stipulation with Western
10 Escrow, issued a Demand For and Order Taking Possession of the Trust Funds and Escrow Records
11 Pursuant to California Financial Code Section 17621.

12 8. Both the Commissioner, during the special examination, and EAFC, during its claims
13 process review, conducted an extensive review of the books and records of Western Escrow. The
14 Commissioner's review of the books and records disclosed a trust account shortage of \$287,789.97.
15 This shortage represents the amount of trust funds embezzled by Luna, \$313,048.94, minus funds
16 replaced into the trust account by Antoniades in the amount of \$25,258.97. The Claims Decision of
17 EAFC does not render a determination as to the amount of the trust account shortage, but only that it
18 will indemnify \$257,202.00 to the Western Escrow trust account. Thus, leaving a trust account
19 shortage of \$30,587.97. Additionally, while a significant amount of the trust account shortage has
20 been identified to the appropriate escrow account, additional review is needed to finally determine to
21 whom the embezzled trust funds belong.

22 9. The Commissioner believes that a receivership is the only feasible manner in which
23 to pursue the avenues necessary to identify all trust claimants, restore the trust account to the extent
24 feasible and thereafter distribute trust monies given the conditions of the EAFC Claims Decision and
25 that insufficient Western Escrow assets exist from which to otherwise pursue the necessary avenues.

26 10. Pursuant to Financial Code section 17636, the Commissioner is authorized to petition
27 the superior court for the appointment of a receiver to wind up the affairs of a licensee after having
28 taken possession of the licensee.

1 11. The Commissioner submits that the appointment of a limited receiver by this Court
2 over Western Escrow is necessary to properly wind up the trust account affairs of Western Escrow
3 and to provide the greatest protection possible to the customers of Western Escrow. The
4 Commissioner submits that a situation exists wherein irreparable harm will be suffered by the public
5 unless and until a receiver is appointed over Western Escrow in order to wind up the trust account
6 affairs of Western Escrow.

7 Wherefore, the Commissioner prays:

8 A. This Court issue an order naming David J. Pasternak as the receiver over the escrow
9 trust funds of Western Escrow, including, but not limited to, the escrow trust account(s) and the
10 indemnity funds to be paid by Escrow Agents' Fidelity Corporation in the sum of \$257,202.00, any
11 fidelity and surety proceeds, and all bank and escrow records pertinent thereto (the "trust property"),
12 whether directly or indirectly, owned beneficially or otherwise by, or in the possession, custody or
13 control of Western Escrow or Nicholas Antoniadis, or to which Western Escrow has any right of
14 possession, custody or control, irrespective of whomsoever holds such property, in order to obtain an
15 adequate accounting of Western Escrow's trust property and trust liabilities; secure a marshaling of
16 such property; and to forthwith begin winding up and liquidating the trust property affairs of
17 Western Escrow in accord with the provisions of the California Escrow Law, and for said order
18 appointing such receiver to further provide that:

19 (1) The receiver prior to entry upon the duties described herein, take an oath to faithfully
20 perform the duties of a receiver and to observe all of the instructions of this Court;

21 (2) The receiver is authorized, empowered and directed:

22 (a) to review, observe, discover and make notes regarding all the trust property of, or in
23 the possession of Western Escrow, wherever situated, including all trust accounts of Western Escrow
24 in financial depository institutions, and of any other trust property in which Western Escrow has an
25 interest regardless by whom it may be held on an ongoing basis pursuant to this Court's order;

26 (b) To undertake an independent review into the financial condition of the trust property
27 and escrow transactions of Western Escrow and render a report within 90 days reflecting the
28 existence and value of all trust property subject to the review, observation and/or discovery by the

1 receiver and of the extent of the trust liabilities, both those claimed by others to exist and those
2 which the receiver believes to be the legal trust obligations of Western Escrow, and any further
3 information the receiver believes may assist in an equitable disposition of this matter, and to include
4 in its report the receiver's opinion regarding the ability of Western Escrow to meet its trust
5 obligations, and his recommendation regarding the best method of distributing the trust property to
6 the owners thereof;

7 (c) To file within 30 days of his qualification and appointment hereunder, a preliminary
8 inventory of all trust property of which he shall then have reviewed, observed and/or discovered
9 pursuant to this Court's order. Additionally, the receiver is to file one or more supplemental
10 inventories when and if he shall subsequently come into knowledge of additional items appropriate
11 to said inventory;

12 (d) To retain and employ such attorney(s) to assist, advise and represent the receiver in
13 the performance of his duties and responsibilities as the Court may approve upon written application
14 of the receiver;

15 (e) To retain and employ Allen Eggers, CPA, as his accountant, and such other such
16 persons, clerical and professional, to perform such tasks as may be necessary to aid the receiver in
17 the performance of his duties and responsibilities (including the personnel at Pasternak, Pasternak &
18 Patton, A Law Corporation, in which the receiver and his wife are shareholders);

19 (f) To be the sole signator on all trust bank accounts of Western Escrow;

20 (g) To bring such proceedings as are necessary to enforce the provisions hereof;

21 (h) To bring such actions as are necessary to modify the provisions hereof;

22 (i) To make such payments and disbursements from the trust property so taken into
23 custody, control, and possession of the receiver or otherwise received by him, as may be necessary
24 and advisable in discharging his duties as receiver;

25 (j) To preserve trust property;

26 (k) To institute, prosecute, defend, compromise, intervene and become a party either in
27 his own name or in the name of Western Escrow to such suits, actions, or proceedings as may be
28 necessary for the protection, maintenance, recoupment or preservation of the trust property of

1 Western Escrow and its escrow parties, with prior court approval; and

2 (l) To divert, take possession of and secure all mail of Western Escrow, in order to
3 screen such mail for mail relating to the trust property, returning non-trust property mail to Nicholas
4 Antoniadis, president of Western Escrow, and to effect a change in the rights to use any and all post
5 office boxes and other mail collection facilities used by Western Escrow.

6 B. The receiver is hereby vested with, and is authorized, directed, and empowered to
7 exercise, all of the powers of Western Escrow's officers and directors or persons who exercise
8 similar powers and perform similar duties, with respect to the trust property, whose authority is
9 hereby suspended; and Western Escrow's officers, agents, employees, representatives, directors,
10 successors in interest, attorneys in fact and all persons acting in the concert or participating with
11 them, are hereby divested of, restrained and barred from exercising any of the powers herein vested
12 in this receiver.

13 C. Any local, state or federal law enforcement and regulatory agency having jurisdiction
14 over matters relating to Western Escrow's business shall be entitled to review, without exception, all
15 reports of the receiver and all books, records, and files on Western Escrow in the possession of the
16 receiver at any time during normal business hours, and to make any abstract or copies of said
17 documents as it desires.

18 D. Western Escrow and its respective officers, directors, agents, servants, employees,
19 successors, assigns, affiliates, and other persons or entities under their control and all persons or
20 entities in active concert or participation with them, and each of them, to turn over to the receiver
21 records, documentation, charts and/or descriptive material, which relate, directly or indirectly, to the
22 trust property of Western Escrow or otherwise belonging to its escrow parties, now held by Western
23 Escrow or any of them.

24 E. This Court will retain jurisdiction of this action in order to implement and carry out
25 the terms of all orders and decrees that may be entered herein or to entertain any suitable application
26 or motion by Petitioner and/or receiver for additional relief or modification of any order made herein
27 within the jurisdiction of this Court.

28 F. During the pendency of this receivership, except by leave of court, all parties to

1 escrows held by Western Escrow and any other persons seeking relief of any kind, in law or in
2 equity, from Western Escrow relating to the trust property, and all others acting on behalf of any
3 such escrow parties or other persons including sheriffs, marshals, servants, agents and employees are
4 restrained from:

- 5 (1) commencing, prosecuting, continuing or enforcing any suit or proceeding;
- 6 (2) executing or issuing or causing the execution or issuance of any court attachment,
7 subpoena, replevin, execution or other process for the purpose of impounding or taking possession of
8 or interfering with or creating or enforcing a lien upon any property owned or in the possession of
9 Escrow Source or its affiliates, or the receiver appointed herein, where ever situated;
- 10 (3) taking, retaining, retaking or attempting to retake possession of any trust property;
- 11 (4) withholding or diverting any trust property obligation;
- 12 (5) doing any act or other thing whatsoever to interfere with the possession of or
13 management by the receiver herein and of the trust property, controlled by or in the possession of
14 Western Escrow or to in any way interfere with said receiver or to interfere in any manner during the
15 pendency of this proceeding with the exclusive jurisdiction of this Court over the Western Escrow
16 trust property.

17 G. At such time as the financial condition of the trust property has been ascertained by
18 the receiver and at such time as the trust property has been marshaled and all trust liabilities have
19 been determined, the receiver shall file an application with the Court for disposition of such trust
20 property. The application shall propose in detail the winding up and the distribution of trust funds.
21 If necessary, the receiver shall be authorized to propose and carry out a partial distribution, retaining
22 such funds pending final distribution as are necessary to finance any pertinent litigation or the
23 remaining operation of the receivership.

24 H. The receiver shall be paid an hourly rate of \$475.00 for his services and shall be
25 entitled to reimbursement for usual and customary expenses, including out of pocket expenditures on
26 behalf of the receivership estate, which shall be paid from the surety bond of Western Escrow
27 required by the Escrow Law, if any exists, and then, if insufficient, from the trust funds, and that the
28 State of California shall have no liability whatsoever for any costs, fees and/or out pocket expenses

1 that may result from such receivership. The receiver and any professional hired by him shall report
2 their fees and expenses to this Court on a monthly basis for payment of reasonable fees and expenses
3 incurred by the receiver or such professional, and shall be entitled to payment of said fees and
4 expenses on account as hereinafter provided. Copies of such reports to the Court shall be promptly
5 served on all attorneys of record for parties in this action, who shall have ten (10) calendar days
6 following the filing and service of such report to file any objections thereto with the Court, and serve
7 any such objections by facsimile and mail on the receiver. If no objections are filed with the Court
8 and served within the ten (10) calendar day period, the receiver shall thereupon draw funds from the
9 receivership estate sufficient to pay one-hundred percent (100%) of out-of-pocket expenses and fees,
10 including all professional fees, and other expenses such as in office copying and facsimile charges,
11 without further order of the Court. If any objections are filed, the receiver may draw funds from the
12 receivership estate sufficient to pay any amounts as to which there is no objection, and the Court will
13 conduct a hearing on any objections upon motion of the receiver or the objecting party. At such
14 hearing, the compensation of the receiver or other professional making application, as well as
15 allowable disbursements and expenses, will be determined by the Court, and the receiver will be
16 directed to draw funds from the receivership estate to pay one-hundred percent (100%) of the
17 amounts so determined by the Court. Notwithstanding such interim monthly payments of fees and
18 expenses, all fees and expenses shall be submitted to the Court for its approval by a properly noticed
19 request for fees, stipulation of all parties or the receiver's Final Account and Report. Upon approval
20 of the fees and expenses of the receiver or other professional, any hold back amounts still due and
21 owing to the receiver or other professional shall be paid from the receivership estate.

22 I. The disbursement of Western Escrow's trust funds is prohibited until a reconciliation
23 of Western Escrow's trust account(s) has been completed and the Petitioner has approved the
24 reconciliation of which said approval shall not be unreasonably withheld, except to pay the costs and
25 expenses of the receivership as provided for in paragraph 9 above.

26 J. The receiver shall be required to file a bond with the Court in this matter in the
27 amount of \$0.00 or such other minimal amount as determined by the Court.
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1 Dated: November 5, 2007
2 Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

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5 By _____
6 Judy L. Hartley
7 Attorney for Petitioner
8 California Corporations Commissioner
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